87-1273

No.

IN THE

SUPREME COURT of the UNITED STATES

October Term, 1987

MARSHA WISLOCKI-GOIN,

Petitioner,

vs.

DARLENE WANDA MEARS, Judge,
Lake Superior Court, Juvenile
Division and Lake County, Indiana,
a municipal corporation,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

RICHARD A. MILLER
Gouveia & Miller
521 East 86th Avenue, Suite E
Merrillville, Indiana 46410
Telephone: (219) 736-6020
Attorney for Petitioner
Marsha Wislocki-Goin

QUESTIONS PRESENTED

(1) Whether a citizen's claim of discrimination should be considered time barred where that citizen did not file a charge of discrimination within 180 days of the offense because at the time of the offense the offending parties purposely concealed and withheld facts from that citizen indicating such discrimination.

(2) Whether a citizen's claim of discrimination should be considered time barred where such claim was part of the citizen's EEOC charge attached to and made a part of the complaint filed in the district court and where the defendants failed to raise a limitation of action defense in their answers.

PARTIES AFFECTED

Appellant-Plaintiff Below: Marsha Wislocki-Goin.

Appellee-Defendants Below: Darlene Wanda Mears, Judge, Lake Superior Court, Juvenile Division and Lake County, Indiana, a municipal corporation.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

IN THE

SUPREME COURT of the UNITED STATES

October Term, 1987

No.

MARSHA WISLOCKI-GOIN,

Petitioner,

vs.

DARLENE WANDA MEARS, Judge,
Lake Superior Court, Juvenile
Division and Lake County, Indiana,
a municipal corporation,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

To The Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your Petitioner, Marsha Wislocki-Goin, respectfully prays that a Writ of

Certiorari be issued to review the decision of the United States Court of Appeals for the Seventh Circuit in the above case.

OPINIONS BELOW

The decision of the United States Court of Appeals for the Seventh Circuit, that is reported at 831 F. 2d 1374 is attached as Appendix A. The decision of the United States District Court for the Northern District of Indiana, Hammond Division, is attached as Appendix B.

JURISDICTION

The judgment for the United States Court of Appeals for the Seventh Circuit was entered on October 21, 1987. This Court has jurisdiction under Title 28, Section 1254, United States Code.

STATUTES INVOLVED

42 U.S.C. sec. 2000e-5 (in pertinent part)

A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred....

PROCEDURAL RULES INVOLVED

Rule 1, F.R.C.P. (in pertinent part)

They (Rules of Procedure) shall be construed to secure the just, speedy, and inexpensive determination of every action.

Rule 8(c), F.R.C.P. (in pertinent part)

In pleading to a preceding pleading, a party shall set forth affirmatively... statute of limitations...and any other matter constituting an avoidance or affirmative defense.

Rule 10(c), F.R.C.P. (in pertinent part)

A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

STATEMENT OF THE CASE

NATURE OF THE CASE, COURSE OF PROCEEDINGS AND DISPOSITION BELOW:

This is an individual, non-class suit brought under Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e. Petitioner Marsha Wislocki-Goin, filed her charge of discrimination on May 18, 1983, with the Equal Employment Opportunity Commission. On November 4, 1983, the Equal Employment Opportunity Commission, through the Department of Justice, issued to Mrs. Goin its Notice of Right to Sue. Mrs. Goin timely filed her action in the United States District Court for the Northern District of Indiana,

Hammond Division, on January 17, 1984. The case was tried to the bench on January 21, 1986. On October 20, 1986, the District Court entered its Order directing the Clerk of the Court to enter judgment for the defendants. On October 21, 1986, judgment was entered for the defendants.

Thereafter and within the time provided by the Federal Rules of Appellate Procedure, Mrs. Goin filed her Notice of Appeal with the United States Court of Appeals for the Seventh Circuit. Following submission of briefs and arguments of counsel, the Seventh Circuit affirmed the judgment of the district court on October 21, 1986.

Your petitioner, Mrs. Goin, now asks for a Writ of Certiorari.

STATEMENT OF FACTS RELEVANT TO ISSUES PRESENTED:

Petitioner, Marsha Wislocki-Goin,

(hereinafter Mrs. Goin) responded to a newspaper ad for a teaching job with the Respondent, Lake County government (hereinafter Lake County) during the summer of 1982. Mrs. Goin was interviewed by a number of individuals working under the control of Respondent, Darlene Wanda Mears, Judge, Lake Superior Court, Juvenile Division (hereinafter Judge Mears) as well as Judge Mears herself. Mrs. Goin presented herself and was told she was being considered for a new job in the Lake County Jail.

On August 9, 1982, Mrs. Goin was hired, but rather than being sent to the jail job she was assigned duties as a teacher in the Lake County Juvenile Detention Center, where Mark Helmrich was already working as a physical education teacher. In October 1982, the teaching job in the Lake County Jail was given to

Mark Helmrich, a male. At the time, Mrs. Goin was advised by her superior it was simply the Judge's decision and that she should "just let it go." She still had a job and gave no further thought to losing a 50-50 opportunity to get the jail job to a male.

In late December 1982, Mrs. Goin learned for the first time that her job was in jeopardy. On January 3, 1983, she received a letter of termination, which was later rescinded so Mrs. Goin could be provided a "hearing". At this time Mrs. Goin was informed by the superintendant of the Juvenile Detention Center (the third in command under Judge Mears) that she, Mrs. Goin, would not have been terminated were she not a woman. Following the hearing, Judge Mears insisted on termination. On January 28, 1983, Mrs. Goin was sent a new letter of termination

setting out the reason as two acts of insubordination; i.e. wearing her hair down on two occasions and excessive make-up. No written reprimands had ever been issued to Mrs. Goin. No males had ever been discharged for their manner of dress or appearance.

Mrs. Goin reacted to these reasons and everything leading up to the termination as being sexually oriented.

On March 18, 1983, Mrs. Goin filed her charge of sex discrimination with the EEOC setting out her termimation of employment and her denial of the job in the Lake County Jail as two separate grounds of discrimination.

During the pendency of this case in the District Court and while taking the deposition of Judge Mears, Mrs. Goin learned for the first time that she did not get the job in the Lake County Jail

because the Sheriff of Lake County told Judge Mears "there's no broad that's going to work in this facility".

The complaint she had filed in this cause had attached thereto and made reference therein to Mrs. Goin's "charge of discrimination" filed with the Equal Employment Opportunity Commission on May 18, 1983. That "charge" included the denial of the jail job as a separate ground of discrimination. The defendants did not raise a statute of limitation defense to the jail job issue until five (5) days before trial, and then it was done as part of a "trial brief".

REASONS FOR GRANTING THE WRIT

THE SEVENTH CIRCUIT DECIDED A TITLE VII CASE IN A MANNER THAT IGNORES, AND IS CONTRARY TO, RULING PRECEDENT OF THIS COURT

We believe the Seventh Circuit rendered a decision which is directly

opposed to ruling precedent in Zipes v. Transworld Airlines, Inc., (1982) 455 U.S. 385.

The Seventh Circuit decided that every time a member of a protected class is in any way adversely affected by any employment decision, that individual had better take steps to preserve their right of attack by filing a charge of discrimination within 180 days of that employment decision or forever be barred from doing so, without the necessity of the offending party properly raising a statute of limitations defense. As a consequence, the Seventh Circuit decided a substantial question that impacts upon all citizens, be they employers or employees. Indeed, such a decision is likely to open the proverbial "floodgates of litigation" making it necessary to second guess, if you will, virtually thousands of daily

employment decisions where members of a protected class are involved.

We do not believe losing a 50-50 chance of obtaining a certain job to a male is a factual situation where it was "apparent" or "should have been apparent to a person with a reasonably prudent regard for his rights" that they were a victim of discrimination. (Appendix A at App. 13). We do not believe it was unreasonable for Mrs. Goin to wait until she was discharged for what, on its face, appeared to be sexually oriented grounds before she sought a remedy under Title VII. She should not be penalized for being cautious before hurling charges of "discrimination".

This Court in Zipes held that the time limitation applicable to filing Title VII claims with the EEOC is not a jurisdictional prerequisite, but rather is

like a statute of limitations. It is subject to waiver, estoppel and equitable tolling. This Court reasoned in that decision that Title VII was a remedial statute and set forth steps to be followed by the aggrieved party for the "purpose...of prompt notice to the employer" and further since those initial steps in remedy are (as they were here) ones initiated largely by laymen, to create a jurisdictional prerequisite would unjustly deny many claimants their day in court by establishing an unyielding gauntlet of traps and arbitrary deadlines. See, Love v. Pullman, (1972) 404 U.S. 522; Electrical Workers v. Robins & Myers, Inc., (1976) 429 U.S. 229; and Mohasco Corp. v. Silver, (1980) 447 U.S. 807.

By agreeing to resolve this case on the "threshold issue of timeliness" as was done in the district court, (Appendix at

App. 14), the Seventh Circuit has effectively denied Mrs. Goin her day in court on the issue of the loss of the jail job to a male because the sheriff of Lake County, Indiana didn't want any "broads...to work in this facility." We do not believe such a resolution is in the spirit of Zipes and the purposes of Title VII as expressed in that decision. Nor do we believe it is in keeping with the spirit of justice to reward parties who withhold such information from complaining parties until they are placed under oath, pendente lite, well after statutory time limits have run.

Furthermore, it is urged that the Seventh Circuit violated the spirit of the Federal Rules of Civil Procedure as enunciated in Rule 1 by not considering Mrs. Goin's incorporation of her attached EEOC charge to her complaint as permitted

and contemplated by Rule 10(c), Federal Rules of Civil Procedure. Had the Seventh Circuit considered such a pleading as adequate, it would then have placed the burden on the alleged offending parties below to raise any defense based upon limitations of actions in the proper manner. Rule 8(c), Federal Rules of Civil Procedure. It is urged that such parties' failure to raise that defense until five (5) days before trial and then by way of trial brief is tantamount to a waiver.

Seemingly no one disputes, now, that Mrs. Goin lost the jail job to a male because of blatant bigotry on the part of the sheriff. That a female judge would permit herself to be bullied by the "good old boy network" and not reveal that reason to Mrs. Goin, should not have been rewarded by the trial court and then countenanced by the Seventh Circuit in

finding: "We do not believe Ms. Goin's oblique reference to the EEOC complaint was sufficient to give the Court and the defendants adequate notice that Ms. Goin intended to add an entirely new count to her complaint." But, apparently it is entirely satisfactory for the alleged offending party to hide in the weeds and bushwack the unsuspecting victim well after time limits have run on such a victim.

CONCLUSION

For all of the foregoing reasons, this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

RICHARD A. MILLER
Gouveia & Miller
521 East 86th Avenue, Suite E
Merrillville, Indiana 46410
Telephone: (219) 736-6020
Attorney for Petitioner
Marsha Wislocki-Goin

In the

United States Court of Appeals

For the Seventh Circuit

No. 86-2930

MARSHA WISLOCKI-GOIN,

Plaintiff-Appellant,

v.

DARLENE WANDA MEARS, and
LAKE COUNTY, INDIANA,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Indiana, Hammond Division.
No. H 84-39—**James T. Moody**, *Judge.*

ARGUED MARCH 31, 1987—DECIDED OCTOBER 21, 1987

Before RIPPLE and MANION, *Circuit Judges*, and ESCHBACH, *Senior Circuit Judge.*

RIPPLE, *Circuit Judge.* This appeal follows a one-day bench trial on Ms. Wislocki-Goin's Title VII claim of sex discrimination in employment. Ms. Goin had filed previously a charge of sex discrimination with the Equal Employment Opportunity Commission (EEOC) following the termination of her employment with the Lake County Superior Court, Juvenile Division, and the denial to her of a job in the Lake County Jail. The EEOC issued Ms. Goin a Notice of Right to Sue and she filed an action in the United States District Court for the Northern District of

Indiana, Hammond Division. Ms. Goin appeals the district court's entry of judgment in favor of the defendants. For the reasons set forth in the following opinion, we affirm the judgment of the district court.

I

Background

A. *Facts*

In June 1982, Ms. Goin applied for a teaching position with the Lake County government at the Juvenile Detention Center in Crown Point, Indiana. She testified that she thought she was applying for a position working with juveniles at the Lake County Jail. Tr. at 27, 31. Ms. Goin's qualifications for the job included a bachelor's degree in elementary education and child psychology from Purdue University and a master's degree in education with a certification in learning disabilities, also from Purdue. She also had significant employment experience. Ms. Goin interviewed with several people for the position including Judge Darlene Wanda Mears, the Superior Court Judge who oversees the Juvenile Detention Center. She was hired in August 1982, and was assigned duties, at least temporarily, in the Lake County Juvenile Detention Center. Ms. Goin believed that she would receive the position at the Lake County Jail when that job later became available. Tr. at 35.

The record reflects that Judge Mears strives to ensure that the Juvenile Center maintains a professional image. She considers it important that all employees dress conservatively. Although there is no written dress code, Judge Mears describes her dress standards as the "Brooks Brothers look." Tr. at 165. Employees who fail to conform with Judge Mears' appearance requirements are reprimanded. Ms. Goin failed to conform to Judge Mears' appearance requirements at work by wearing excessive

makeup and by wearing her hair down. Ms. Goin was reprimanded orally.[1]

Ms. Goin's dress and grooming habits were not the only conduct of which Judge Mears disapproved. At a deposition hearing of a disturbed juvenile, Ms. Goin wept openly in front of the child. The chief referee, believing that Ms. Goin's conduct was unprofessional and inappropriate, reported the incident directly to Judge Mears. In addition, Ms. Goin wrote a "Dear Santa" letter for a Christmas party which Judge Mears apparently considered offensive. Otherwise, Ms. Goin performed her teaching duties in a thoughtful, capable, and professional manner. Ms. Goin had not been informed that her work was in any way unsatisfactory.

In October of 1982, Ms. Goin learned that she would not be receiving the job at the Lake County Jail. Ms. Goin was told that Judge Mears had decided to hire Mr. Mark Helmerich for that position. Mr. Helmerich had not actively sought the position, and the district court concluded that he was not as qualified as Ms. Goin. *Wislocki-Goin v. Mears*, No. H 84-39, order at 17 (N.D. Ind. Oct. 20, 1986) [hereinafter Order]; R.42 at 17. Ms. Goin was advised by the superintendent of the Juvenile Center to "just let it go, these are the kinds of decisions that are made and it's all for the best, just let it go." Tr. at 40. During discovery in this action, in May of 1985, Ms. Goin

[1] There is some disagreement about the number of times that Ms. Goin was reprimanded about her dress and grooming. Ms. Goin testified that she was reprimanded only one time. Tr. at 64. The district court concluded that she was reprimanded on two occasions, and that after having been reprimanded, she wore her hair down several times subsequently. *Wislocki-Goin v. Mears*, No. H 84-39, order at 3 (N.D. Ind. Oct. 20, 1986); R.42 at 3. Ms. Goin claims that this is not supported by the record and is "clearly erroneous," although she admits to wearing her hair down on at least two occasions. Appellant's Br. at 13. We believe the record is adequate to support the findings of the trial judge. *See Anderson v. City of Bessemer City*, 470 U.S. 564, 573 (1985).

learned that she did not get the job because the county sheriff-elect refused to hire women for positions at the jail. This information was disclosed by Judge Mears, who testified in her deposition that the sheriff told her that "there's no broad that's going to work in this facility." Tr. at 175. At trial, Judge Mears changed her testimony and said that she learned this information second-hand. *Id.* at 175-76.

By a letter dated January 3, 1983, Ms. Goin was discharged from her position as a teacher in the Lake County Juvenile Center. The termination was, however, rescinded after it was determined that Ms. Goin was entitled to a hearing pursuant to the Lake County Personnel Policies Manual. At the hearing, Wayne Wackowski, the education director of the Juvenile Detention Center, gave two reasons for disciplinary action against Ms. Goin: 1) two acts of insubordination; and 2) two incidents of failure to conduct herself in such a manner as to promote or support the purposes, goals, policies, position, and philosophy of the Juvenile Court.[2] The two incidents of insubordination occurred when Ms. Goin wore her hair down and wore excessive makeup. After the hearing, the panel recommended that Judge Mears not discharge Ms. Goin. However, Judge Mears disagreed and ordered the panel to terminate Ms. Goin. In late January 1983, Ms. Goin was notified that she was terminated for two acts of insubordination—wearing her hair down and wearing excessive makeup. Joint Ex. 10; Tr. at 120-21.

The evidence presented at trial showed that, in addition to Judge Mears, many women held important positions at the Juvenile Center. Ms. Goin was originally hired as a teacher at the Juvenile Center to replace another woman, Donna Echterling. A second teaching position was later filled by Patricia Haughton, a female. At the time of trial, two of the four hearing referees were female, as

[2] The two incidents of improper conduct were the "Dear Santa" letter and the crying incident at the juvenile deposition hearing.

was the chief hearing referee. In addition, a female was the head of the Intake Department, and another female served as the Court Executive. Tr. at 196-97.

Ms. Goin filed a discrimination claim with the EEOC on May 18, 1983. In that claim, she alleged discrimination based on her discharge and on the failure to receive the job with the Lake County Jail. R.1 at Ex. "A". After Ms. Goin received her Right-to-Sue letter, she filed a complaint in the district court for the Northern District of Indiana, Hammond Division. In that complaint, she alleged that she had been subject to discrimination in her discharge, but no express mention was made of the jail job. However, her EEOC claim, which contained complaints with respect to both the jail job and her discharge, was appended to the complaint. *Id.* at 2.

Defendants' answers made no mention of the jail job, nor did they mention an affirmative defense that Ms. Goin failed to file the EEOC claim within 180 days after denial of the jail job.[3] R.12 and R.13. However, after discovery, in their trial brief, defendants argued that the claim of discrimination based on the jail job was not properly before the district court because Ms. Goin had not filed an EEOC claim within 180 days of being denied that job. R.31(a) at 2. They also claimed that they had not waived this defense because Ms. Goin's complaint did not raise a claim of discrimination based on the jail job, and it

[3] The defendants also did not raise a defense relating to judicial immunity. This court previously ruled that a state-court judge was entitled to immunity from liability for damages in a section 1983 action for alleged sex-based discrimination arising from the dismissal of a probation officer. *Forrester v. White*, 792 F.2d 647 (7th Cir. 1986), *cert. granted*, 107 S. Ct. 1282 (1987). Because the defendants did not raise the defense of judicial immunity, the Supreme Court's eventual disposition of *Forrester* will have no bearing on this lawsuit. *Boyd v. Carroll*, 624 F.2d 730, 732 (5th Cir. 1980); *Gomez v. Toledo*, 446 U.S. 635, 640 (1980). Moreover, we believe the facts of this case are vastly different from the facts in *Forrester*.

therefore did not come to their attention until discovery. *Id.* at 1. In her trial brief, Ms. Goin argued that her EEOC claim was timely because she had no reason to know that her nonselection was based on her gender at the time she was denied the job. R.33 at 2.

B. *District Court Decision*

1. Discriminatory Discharge Claim

The district court concluded that the discharge of Ms. Goin did not constitute an unlawful employment practice within the meaning of Title VII. With respect to Ms. Goin's disparate treatment theory, the district court held that she failed to establish a prima facie case because she did not prove that a similarly-situated male employee was given the benefit of more lenient treatment. The court also concluded that Ms. Goin had failed to rebut the defendants' legitimate nondiscriminatory reason for her discharge—violation of the dress and grooming code.

With respect to the plaintiff's disparate impact theory, the court held that the defendant had established a reasonable personnel policy with respect to grooming. Moreover, while the grooming standards were different for men and women, these were "only minor variations contained in an overall, even-handed grooming policy." Order at 15.

2. The Jail Job

Before the EEOC, Ms. Goin alleged that she did not receive the teaching job at the Lake County Jail because of sex discrimination. She alleged that, although her qualifications were superior, Mark Helmerich was chosen to fill the jail job. Without specifically addressing the issue of whether this claim had been raised adequately by appending the EEOC claim to the complaint, the court concluded that Ms. Goin's claim with respect to the jail job was time-barred; she had not filed the EEOC charge within 180 days of the date that Mr. Helmerich received the job in October 1982. The district court explained that the

180-day period begins to run "when an employee either knows or should know that an unlawful employment practice has been committed." Order at 17 (quoting *Ortiz v. Chicago Transit Auth.*, 639 F. Supp. 310, 312 (N.D. Ill. 1986)). The jail job was filled by a male on October 9, 1982. In the district court's view, the 180-day period began to run on that date because Ms. Goin knew that the position was filled by a male on that date. The court further reasoned that equitable tolling did not apply because Ms. Goin did not allege that she ever inquired into the reasons why she did not receive the jail job after she was informed that Judge Mears appointed Mr. Helmerich to the position.

Accordingly, because Ms. Goin did not make out a claim of sex discrimination with respect to her discharge under either the disparate treatment or the disparate impact theory, and because her jail-job claim was time-barred, the district court entered judgment in favor of the defendants.

C. *Appellant's Contentions*

1. Disparate Treatment Claim

Ms. Goin argues that she made a prima facie case of sex discrimination. She then argues that, after the burden shifted to the employer to articulate a legitimate nondiscriminatory reason for the rejection, she was able to show that this reason was a pretext. Ms. Goin argues that, "when looked at with the truly discerning eye, it becomes clear that the so-called legitimate nondiscriminatory reason for termination was merely pretextual. Mrs. Goin was fired because, as Judge Mears' superintendent told Mrs. Goin,—*she was a woman.*" Appellant's Br. at 16 (emphasis in original). She also submits that a review of the evidence shows that, although males have been warned about their hair or their manner of dress, not one was ever issued a written reprimand or fired. Ms. Goin argues that Judge Mears' dress code was unwritten and nebulous, and that there was no evidence or finding that the style of one's

hair "is not in keeping with the 'conservative image.' " Appellant's Br. at 15.

2. Disparate Impact Claim

Ms. Goin argues that, even though the dress and appearance code was facially neutral, it in fact fell more harshly upon women. She claims that the evidence was clear and unrefuted that no male was ever discharged because of appearance, yet she was terminated for wearing her hair down and wearing excessive makeup.

3. Jail Job

Ms. Goin first argues that her claim of discrimination for the loss of the jail job is not time-barred. She states that her claim of discrimination regarding the jail job was included in the complaint in the district court, and that, because the defendants did not raise the affirmative defense of the statute of limitations to that claim, the defendants waived the defense that the jail-job claim is time-barred. Moreover, Ms. Goin argues that she was within the 180-day period for filing a claim with the EEOC because she did not know in October 1982 that the jail job had been given to a man because of discrimination against her. She states that it was the loss of her job in January 1982 that signaled the possible existence of gender-based discrimination. Furthermore, she states that it was not until May 1985, in preparation for trial, that she learned that she had been denied the jail job because the sheriff-elect of Lake County had said that "there's no broad that's going to work in this facility." Tr. at 40. She argues that this evidence of discrimination was purposely withheld from her until well after the 180-day filing deadline set forth in Title VII.

II

Discussion

A. *Disparate Treatment*

As the district court correctly noted, in a disparate treatment claim, the "ultimate burden of persuading the trier of fact that the defendant intentionally discriminated against the plaintiff remains at all times with the plaintiff." *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 253 (1981). In *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), the Supreme Court first "set forth the basic allocation of burdens and order of presentation of proof in a Title VII case alleging discriminatory treatment." *Burdine*, 450 U.S. at 252 (footnote omitted). The Court in *Burdine* described the *McDonnell Douglas* allocation as follows:

> First, the plaintiff has the burden of proving by the preponderance of the evidence a prima facie case of discrimination. Second, if the plaintiff succeeds in proving the prima facie case, the burden shifts to the defendant "to articulate some legitimate, non-discriminatory reason for the employee's rejection." Third, should the defendant carry this burden, the plaintiff must then have an opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by the defendant were not its true reasons, but were a pretext for discrimination.

Burdine, 450 U.S. at 252-53 (citations omitted) (quoting *McDonnell Douglas*, 411 U.S. at 802).

In this case, the district court believed that the plaintiff had failed to make out a prima facie case because she had not demonstrated that similarly-situated male employees were treated differently. Moreover, the court determined that the plaintiff had failed to demonstrate that the defendant's asserted legitimate business purpose was a pretext for discrimination. We believe that the district court was correct in both respects and that therefore its determination that the plaintiff failed to prove intentional

discrimination was not clearly erroneous. *See Anderson v. City of Bessemer City*, 470 U.S. 564, 573-76 (1985). Although some evidence was presented that Ms. Goin was fired because of her gender,[4] there was more than ample evidence to support the district court's determination that she was discharged because she failed to follow her employer's instructions, applied evenhandedly to males and females, with respect to a legitimate business concern.

B. *Disparate Impact*

To establish a disparate impact case under Title VII, Ms. Goin need not show intentional discrimination. *EEOC v. Madison Community Unit School Dist. No. 12*, 818 F.2d 577, 587 (7th Cir. 1987); *Griffin v. Board of Regents*, 795 F.2d 1281, 1287 (7th Cir. 1986). To establish a prima facie case, Ms. Goin must only show that Judge Mears' dress and grooming standards had a substantially disproportionate impact on women. *Dothard v. Rawlinson*, 433 U.S. 321, 329 (1977); *Griffin*, 795 F.2d at 1287. In *Dothard*, the Court set forth the mode of analysis and burdens of proof after a plaintiff establishes a prima facie case:

> Once it is . . . shown that the employment standards are discriminatory in effect, the employer must meet "the burden of showing that any given requirement [has] . . . a manifest relationship to the employment in question." *Griggs v. Duke Power Co.*, [401 U.S. 424, 432 (1971)]. If the employer proves that the challenged requirements are job related, the plaintiff may then show that other selection devices without a similar discriminatory effect would also "serve the em-

[4] Ms. Goin testified that she was told by Dr. Billy Williams, superintendent of the Juvenile Center, that "if I had not been a woman, this would never have happened." Tr. at 54. We do not believe that this evidence is sufficient to establish that the district court's decision was clearly erroneous, in light of the ample evidence showing that Ms. Goin was fired for violating the dress and grooming code.

> ployer's legitimate interest in 'efficient and trustworthy workmanship.' " *Albemarle Paper Co. v. Moody*, [422 U.S. 405, 425 (1975)], quoting *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 801 [(1973)].

433 U.S. at 329.

The record contains little evidence to suggest that the dress and grooming standards adversely affected women. At the Juvenile Center, the chief hearing referee was a woman; two of the four hearing referees were women; several of the teachers have been women; the head of the Intake Department was a woman; and the Court Executive was a woman. Ms. Goin presented no evidence that Judge Mears' standards had worked a hardship on females or had adversely affected the employment opportunities of females. Therefore, we agree with the district court that Ms. Goin failed to establish a prima facie case of disparate impact.

Furthermore, the record contains ample evidence to support the trial judge's conclusion that Judge Mears' grooming requirements were reasonably related to her "business needs." The evidence presented at trial demonstrated that Judge Mears was very concerned about the public's confidence in the professionalism of government employees. Tr. at 117-18. For that reason, Judge Mears required her male[5] and female employees to adhere to strict dress-code standards. We cannot say that these requirements were not reasonably related to Judge Mears' "legitimate interest[s]." *Dothard*, 433 U.S. at 329.

---

[5] For example, Mr. Curtis Robinson, assistant superintendent at the Juvenile Center, testified that he was orally reprimanded for wearing a sweater instead of a suit. Tr. at 128.

C. *The Jail Job*

1. Statute of Limitations

The district court ruled that Ms. Goin's sex discrimination claim concerning the denial of the job with the Lake County Jail was time-barred. This conclusion was premised on Ms. Goin's failure to file a claim with the EEOC within 180 days after Mr. Helmerich received that job. On October 9, 1982, Ms. Goin knew that she had not received the job. Because the 180-day period begins to run "when an employee either knows or should know that an unlawful employment practice has been committed," the district court ruled that Ms. Goin's EEOC claim filed on May 18, 1983 was too late. Order at 17 (quoting *Ortiz v. Chicago Transit Auth.*, 639 F. Supp. 310, 312 (N.D. Ill. 1986)). Furthermore, the district court concluded that Ms. Goin was not entitled to have the commencement of the 180-day limit tolled because Ms. Goin "fail[ed] to allege she ever inquired into the reasons why she did not receive the jail teaching job after she was informed that the judge appointed Helmerich." *Id.* at 18.

We believe that the district court's resolution of this issue was the correct one. This court has recognized the doctrine of equitable tolling of the limitations period. *Vaught v. R.R. Donnelley & Sons*, 745 F.2d 407, 410-11 (7th Cir. 1984); *Wolfolk v. Rivera*, 729 F.2d 1114, 1117 (7th Cir. 1984). *See generally Kontos v. Department of Labor*, 826 F.2d 573, 577 (7th Cir. 1987). However, there is no basis for the application of the doctrine here. Ms. Goin, according to her own testimony, originally applied for the jail job. Tr. at 27, 31-33. When she was hired, she was told that she would be assigned temporarily to the Juvenile Detention Center "until the jail position opened up officially." *Id.* at 35. Although she assumed she would "in fact [be] going to go across the street and teach at the Lake County jail," *id.* at 38, she was informed later that "another round of interviews for that position were scheduled." *Id.* This development occurred even though she was already preparing a curriculum for the jail job. *Id.* After

the interviews, she was informed that a man, Mark Helmerich, received the job. *Id.* at 40. Rather than make further inquiry, she accepted the advice of the superintendent of the Juvenile Center to "just let it go, these are the kinds of decisions that are made and it's all for the best, just let it go." *Id.* She then remained at the Juvenile Center and "developed a curriculum for Mr. Helmerich as he had no experience in that area . . . ." *Id.* at 41. Under these circumstances, we cannot say that the trial judge erred in concluding that, at that point, Ms. Goin was obligated to make further inquiry. "[F]acts that would support a charge of discrimination were apparent or should have been apparent to a person with a reasonably prudent regard for his rights similarly situated to the plaintiff." *Wolfolk*, 729 F.2d at 1117 (quoting *Reeb v. Economic Opportunity Atlanta, Inc.*, 516 F.2d 924, 931 (5th Cir. 1975)); *see also Wolfolk*, 729 F.2d at 1118 n.5 (citing with approval *Quintana v. Bergland*, 23 FEP Cases 1489 (D.N.M. 1980) ("thirty-day time limit began to run on date female plaintiff first learned that male whom she considered less well-qualified was hired for a federal government position, not on the date she was told she failed to qualify for position")).

2. Waiver

Nor do we believe that the defendants waived their right to rely on the limitations period by their failure to assert this defense in their answers. In her complaint filed in the district court, Ms. Goin made no explicit reference to the jail job. However, in paragraph 10 of the complaint, she made the following reference to the EEOC charge: "Plaintiff filed her charge with the Equal Employment Opportunity Commission on May 18, 1983. A copy of said charge of discrimination is attached hereto and made a part hereof as Exhibit 'A'." She now claims, as she did in the district court, that such a reference was sufficient to place her allegation in issue. She relies on Fed. R. Civ. P. 10(c) which states:

> (c) Adoption by Reference; Exhibits. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

We do not believe Ms. Goin's oblique reference to the EEOC complaint was sufficient to give the court and the defendants adequate notice that Ms. Goin intended to add an entirely new count to her complaint. Rule 10(c) cannot be read in a vacuum. It must be remembered that the principal function of the complaint is to give the court and the opposing party sufficient notice of the allegation to which a response must be made. *Chicago Painters & Decorators Pension Funds v. Karr Bros.*, 755 F.2d 1285, 1287 n.1 (7th Cir. 1985). In the context of a Title VII suit, appending the EEOC charges to the complaint hardly serves as notification that the plaintiff is adding an entirely new count. The EEOC complaint may well have been appended to the complaint if Ms. Goin had brought only the question of her discharge to the district court. Moreover, a Title VII litigant may well reevaluate an initial charge of discrimination at the close of the administrative stage of the proceedings and bring to the district court only the claim or claims which, after the administrative proceedings, appear meritorious. Under these circumstances, we do not believe that Ms. Goin's complaint properly set forth a claim based on the jail job and gave the defendants adequate notice that the jail job was a count in the complaint. When the defendants became aware, during discovery, that the plaintiff was making such a claim, they promptly raised the defense. R.31(a) at 1. Therefore, there was no waiver and we must agree with the district court that Ms. Goin's jail-job claim was time-barred.[6]

[6] Because the district judge resolved the matter of the jail-job claim on the threshold issue of timeliness, he had no reason to

(Footnote continued on following page)

Conclusion

Because Ms. Goin failed to prove sex discrimination based on either a disparate treatment or disparate impact theory, we affirm the judgment of the district court as to those claims. Because Ms. Goin failed to file the jail-job charge with the EEOC within 180 days, the district court properly declined to consider the matter on the merits.

AFFIRMED

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

---

[6] *continued*

determine whether the claim, although not properly set forth in the complaint, was before the court because of the mutual acquiescence of the parties. *See* Fed. R. Civ. P. 15(b). Likewise, we do not feel it necessary to reach the issue. *See generally* 6 C. Wright & A. Miller, *Federal Practice and Procedure* § 1493 (Supp. 1987).

USCA 79004—Midwest Law Printing Co., Inc., Chicago—10-21-87—475

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

MARSHA A. WISLOCKI-GOIN, Plaintiff	)	
v.	)	CIVIL NO. H84-39
DARLENE WANDA MEARS, Judge, Lake Superior Court, Juvenile Division, and LAKE COUNTY, INDIANA, a municipal corporation, Defendants.	)	

O R D E R

On Monday, January 10, 1986, a one-day bench trial commenced in this court, brought by plaintiff Marsha A. Wislocki-Goin against defendants Darlene Wanda Mears and Lake County, Indiana. The plaintiff alleged violations of 42 U.S.C. Sec. 2000e et seg. and 31 U.S.C. Sec. 6721. Both plaintiff and defendants were represented by counsel. Following

presentation of evidence by the parties, the court took the matter under advisement. The court now directs the clerk of the court to enter judgment for the defendants. The Findings of Fact and Conclusions of Law are as follows:

FINDINGS OF FACT

1. Marsha A. Wislocki-Goin, the plaintiff, is a female adult citizen of the United States and the State of Indiana.

2. The defendant, Darlene Wanda Mears, is a Judge of Lake County Superior Court, Juvenile Division.

3. During the summer of 1982, an advertisement appeared in the local newspapers advertising the opening of a teaching position for the Lake County Government. The advertisement directed interested applicants to apply with the Juvenile Detention Center of Lake County,

Indiana, located in Crown Point, Indiana.

4. On June 30, 1982, plaintiff applied for the advertised job. She was subsequently interviewed for the position by Wayne Wackowski, the Education Director of the Lake County Juvenile Detention Center; Kurt Gallenkamp, the staff psychologist for the Lake County Juvenile Detention Center; Curtis Robinson, Assistant Superintendent of the Detention Center; and Darlene Wanda Mears.

5. The plaintiff presented herself for the job with the following educational credentials: a bachelor's degree in elementary education and child psychology from Purdue University and a master's degree in education with a certification in learning disabilities from Purdue University. Her job application also evinced significant employment experience.

6. On August 9, 1982, plaintiff was

hired and assigned duties in the Lake County Juvenile Detention Center. Her annual salary was set at $15,750.00.

7. Subsequently plaintiff requested to attend the disposition hearing of a disturbed juvenile, Kevin Lindsey. At this hearing, plaintiff wept openly in front of the child. Chief Referee Peller testified she believed plaintiff's conduct was unprofessional and inappropriate. She reported the incident directly to Judge Mears.

8. In late August or early September, Wayne Wackowski spoke to plaintiff about her hairstyle. Specifically, he warned her that she should wear her hair up.

9. Subsequently plaintiff wore her hair down at work again. Wackowski was called into judge's office and instructed to speak to plaintiff again. Wackowski

informed the judge he had talked to plaintiff about this problem once before. Wackowski spoke to plaintiff again about the necessity of wearing her hair up.

10. The evidence presented at trial established that although plaintiff was warned twice that she should wear her hair up, she failed to follow this directive on several subsequent occasions.

11. The evidence showed that the defendant, Judge Mears, requires her employees to dress in a conservative manner. She described it as the "Brooks Brothers" look. All the witnesses testified that Judge Mears strives to ensure that the Juvenile Center maintains a professional image. She considers it an important part of this image that all employees dress conservatively. The evidence also established that she uniformly requires her employees to dress appropriately. Finally, the testimony

presented reflected that both men and women have been reprimanded for dressing inappropriately.

12. It is undisputed that plaintiff performed her teaching duties admirably. Her superiors considered her to be a thoughtful, capable professional. Plaintiff was not informed her work was unsatisfactory.

13. Plaintiff was discharged from her position as a teacher in the Lake County Juvenile Center by letter dated January 3, 1983.

14. On January 5, 1983, following discussions between various supervisory personnel and the defendant Judge, Dr. Williams determined that the plaintiff was entitled to a hearing pursuant to the Lake County Personnel Policies Manual. Dr. Williams sent a letter to Plaintiff rescinding the January 3, 1983,

termination. He informed her a hearing would take place on January 11, 1983.

15. At this hearing Wayne Wackowski presented two separate grounds for discipline: (1) two acts of insubordination; and (2) two incidents of failure to conduct oneself in such a manner to promote or support the purposes, goals, policies, position, and philosophy of the Juvenile Court. The two incidents of insubordination involved occasions where the plaintiff wore her hair down and excessive makeup.

16. Following the hearing, the hearing panel of Donald Tresnowski, Dr. Billy Williams, and Harry Hoffman recommended to the Defendant Judge that the plaintiff not be discharged. The defendant Judge disagreed and ordered the hearing panel to terminate plaintiff.

17. On January 28, 1983, the hearing panel informed the plaintiff that she was

terminated for two acts of insubordination; i.e., wearing her hair down and excessive makeup.

18. Plaintiff's teaching job was assumed by a male, Mark Helmrich.

19. From April 1978, when Defendant Mears became Judge, until September 1980, only one "core" teaching position existed at the Juvenile Center. In September, 1980, an additional teaching position was created and filled by Donna Echterling, a female. Upon Donna Echterling's resignation, plaintiff was hired to replace her. After plaintiff was discharged, Mark Helmrich filled the second teaching slot. When Wayne Wackowski was promoted from education department head (and teacher) to Superintendent of the Juvenile Center, the second teaching position was filled by Patricia Haughton, a female.

20. In addition to the teaching positions, women have held several positions in the Lake Superior Court, Juvenile Division. Charlotte Peller, the Chief Hearing Referee for the Juvenile Court, testified that two of the four current referees are women. Referee Peller is in charge during the Judge's absence. Additionally, Mira Vucicevic, a female, is the head of the intake department. Diane Schneider, a female attorney, currently serves as Court Executive.

21. Plaintiff testified that at the time she applied for the teaching position with the Lake County Government she was under the impression it was to teach at the Lake County Jail. She further testified that after she was hired it was decided she would start by teaching in the Juvenile Center and would transfer to the jail teaching position. Plaintiff started

teaching in the Juvenile Center in August 1982. Mark Helmrich, a male, was given the jail job on October 9, 1982. Plaintiff was told it was the Judge's decision to hire Mr. Helmrich. In May 1985 plaintiff discovered she did not get the jail job because the sheriff refused to hire women.

22. Plaintiff filed with the EEOC on May 18, 1983. In her filing plaintiff claimed she was discharged from her teaching position with the Lake County Juvenile Center on January 3, 1983 due to sex discrimination. She also claimed she did not receive the Lake County Jail teaching position which was filled in October 1982 due to sex discrimination.

II. Conclusions of Law

1. This Court has jurisdiction over the action against the defendant under Title VII of the Civil Rights Act of 1964

("the Act"), 42 U.S.C. Sec. 2000e et seq.

2. Plaintiff is a member of a protected class within the meaning of the Act. see Willingham v. Macon Telegraph Publishing Co., 507 F. 2d 1084 (5th Cir. 1975).

3. The defendant is an employer within the meaning of section 701(e) of the Act, 42 U.S.C. Sec. 2000e(b).

4. The discharge of the plaintiff did not constitute an unlawful employment practice within the meaning of section 703(a)(1) of the Act, 42 U.S.C. Sec. 2000e-7(a)(1).

5. 42 U.S.C. Sec. 2000e-2(a)(1) provides:

> (a) It shall be an unlawful employment practice for an employer--
>
> (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms,

> conditions, or privileges of employment, because of such individual's race, color, religion, sex, or natural origin;....

42 U.S.C. Sec. 2000e-2(a)(1).

6. Section 2000e et seq. of Title VII is intended to prohibit all practices in whatever form which create inequality in employment based on sex. The Title VII plaintiff "carries the initial burden of showing actions taken by the employer from which one can infer, if such actions remain unexplained, that it is more likely than not that such actions were `based on a discriminatory criterion illegal under the Act.'" Furnco Construction Corp. v. Waters, 438 U.S. 567, 576 (1978).

7. In a disparate treatment claim, a plaintiff seeks to prove that an employer intentionally "treats some people less favorably than others because of their race, color, religion, sex, or natural origin." International Brotherhood of

Teamsters v. United States, 431 U.S. 324, 335 n.15 (1977). Proof of illicit motive is essential. United States Postal Service Board of Governors v. Aikens, ___U.S.___, 103 S.Ct. 1478, 1482 (1983) (quoting Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 253 (1981)); Parker v. School Commissioners, 729 F.2d 524, 528 (7th Cir. 1984). Intentional discrimination may be inferred, however, from a sufficient showing of disparity between the class to which the plaintiff belongs and comparably qualified members of the majority group. Segar v. Smith, 738 F.2d 1249, 1266 (D.C. Cir. 1984).

8. In a disparate treatment claim, the "ultimate burden of persuading the trier of fact that the defendant intentionally discriminated against the plaintiff remains at all times with the

plaintiff." Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248 (1981); Segar, 738 F.2d at 1267.

9. A three-step analysis, initially set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), is used to determine whether an individual plaintiff has met this burden:

> "First, the plaintiff has the burden of proving by the preponderance of the evidence a prima facie case of discrimination. Second, if the plaintiff succeeds in proving the prima facie case, the burden shifts to the defendant 'to articulate some legitimate, non-discriminatory reason for the employee's rejection.' Third, should the defendant carry this burden, the plaintiff must then have an opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by the defendant are not its true reasons, but were a pretext for discrimination."

Burdine, 450 U.S. at 252-253 (citations omitted) (quoting McDonnell Douglas, 411 U.S. at 802-04); See also United States Postal Service Board of Governors v. Aikens,

103 S. Ct. at 1481; Parker v. School Commissioners, 729 F.2d 524, 526 (7th Cir. 1984); Nellis v. Brown County, 722 F.2d 853, 856 (7th Cir. 1983); Lee v. National Can Corp., 699 F.2d 932, 935-37 (7th Cir. 1983). In the present case the plaintiff has failed to rebut the defendants legitimate non-discriminatory reason for her discharge, i.e., she violated the informal office dress and grooming code.

10. The plaintiff has failed to prove her case. She has not proved that a similarly situated male employee was given the benefit of a more lenient practice. See Barnes v. St. Catherine's Hospital, 563 F.2d 324, 327-28 (7th Cir. 1977) (dismissal appropriate where acts of minority and non-minority insubordination not comparable); see generally Mozee v. Jeffboat, Inc., 746 F.2d 365 (7th Cir. 1984) (explaining importance of comparative evidence, using example of

punishment for absenteeism given blacks versus whites); Epstein v. Secretary of the Treasury, 739 F.2d 274, 277 (7th Cir. 1984) (for purposes of comparison, employees must be "substantially equal").

11. To prove intentional sex discrimination in a discharge case, a plaintiff must also prove that, inter alia, she was satisfying the "normal requirements" of her work. Flowers v. Crouch Walker Corp., 552 F. 2d 1277, 1282 (7th Cir. 1977); see also McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). As the Seventh Circuit explained in Flowers, "attributing a discharge to racial discrimination without any evidence that plaintiff was meeting normal job requirements would be unwarranted and unfair." 552 F.2d at 1282-83. The normal requirements of plaintiff's job included conforming to the

informal grooming code that was strictly enforced by the defendant against all employees. The plaintiff, on at least two separate occasions, neglected to dress in an appropriate manner. Plaintiff presented no evidence establishing that any male employee was treated differently. Therefore, there is no evidence that the decision was discriminatorily motivated -- that male employees were treated differently.

13. Plaintiff has failed to rebut the defendants legitimate nondiscriminatory reason, i.e., she failed to comply with the defendant's grooming requirements. Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 254 (1981); Mason v. Continental Illinois National Bank, 704 F.2d 361,366 (7th Cir. 1983). The evidence showed that an employee's appearance was extremely important to the defendant Judge. It is fair to state that

personal appearance was just as important as quality of work. Nonetheless, the evidence revealed that the defendant Judge even-handedly enforced her "Brooks Brothers" grooming requirement. Plaintiff was warned twice that her manner of dress was inappropriate. Nonetheless, she neglected to follow these directives. Plaintiff has not shown that a male employee was treated differently. Thus, she did not prove that she was discriminated against because of her sex.

14. In Bellessimo v. Westinghouse Electric Corp., 764 F.2d 175 (3d Cir. 1985), the plaintiff in a Title VII sex discrimination suit, a female attorney, contended that her superiors request for her to "tone down her attire" was indicative of his discriminatory intent. The district Court agreed. The Third Circuit disagreed by stating:

Dress codes, however, are permissible under Title VII as long as they, like other work rules, are enforced even-handedly between men and women, even though the specific requirements may differ. As the D.C. Circuit has noted, an employer is permitted to exercise its legitimate concern for the business image created by the appearance of its employees:

Perhaps no facet of business life is more important than a company's place in public estimation. That the image created by its employees dealing with the public when on company assignment affects its relations is so well known that we may take judicial notice of any employer's proper desire to achieve favorable acceptance.

Fagan v. National Cash Register Co., 481 F. 2d 1115, 1124-25 (D.C. Cir. 1973).

Westinghouse's evidence shows that although it had no written code, it consistently sought to maintain a conservative dress style in its legal department, and that men were also counselled on their attire. Male attorneys were urged not to wear sport jackets or slacks to the office, and to keep their jackets on during meetings. We therefore find that Mr. Marcovsky's counselling Ms. Bellissimo regarding her attire was not disparate treatment and will not support a Title VII claim.

* * *

In short, the district court found that counselling an employee, here an attorney in a corporate law department, concerning her public behavior with a client on a business trip, her working hours, and -- on one occasion only -- her attire constituted discriminatory treatment. The district court made this holding without finding, and without evidence, that men in the law department had been treated any differently, and in spite of evidence that two male attorneys had been reprimanded for cavorting in a public park, that male attorneys worked more than 40 hours per week, and that male attorneys had been advised to conform to a conservative dress style.

III.

The judgment in a case such as this rests on whether the plaintiff carries "the ultimate burden of persuading the court that she has been the victim of intentional discrimination." Burdine, 450 U.S. at 256, 101 S.Ct. 1095, 67 L.Ed. 2d at 217. With deference to the clearly erroneous standard, we are convinced that Ms. Bellissimo failed to establish the pretextual nature of Westinghouse's reason for discharge. In all of the aspects of employment the district court examined -- dress, working hours, behavior with clients, evaluations, and luggage handling -- there was no evidence to support her contention that she was treated any differently from male employees. On the contrary, evidence in the record shows that she was treated the same

> as male attorneys. Mr. Marcovsky emerges as a strict supervisor who counselled Ms. Bellissimo to adapt to a department with exacting standards in many areas typically left to the individual's discretion. Ms. Bellissimo emerges as an adequate but strident, touchy, and difficult employee. This unfortunate and destructive conflict of personalities does not establish sexual discrimination. The judgment of the district court finding Westinghouse and Marcovsky guilty of sexual discrimination accordingly will be reversed.

Id. at 181-82. Likewise here plaintiff has failed to show that male employees were treated differently. Consequently, she has failed to demonstrate that the defendant's legitimate reason was pretextual.

15. All the witnesses testified that the Lake Superior Court, Juvenile Division has a deliberately conservative dress "image" cultivated by Judge Mears. The evidence also established that both men and women have been verbally reprimanded for dressing inappropriately. The

evidence also established that only plaintiff neglected to dress appropriately after being warned.

16. The evidence showed that the plaintiff was performing her teaching duties admirably. The record also indicated that she is a dedicated professional that is deeply concerned for her students welfare. Title VII though does not mandate that the qualified may not be fired. Title VII prohibits sex discrimination; it does not mandate good management practices. Although it appears arbitrary to fire a capable instructor because she does not dress "appropriately", unless the firing was motivated by unlawful discrimination, Title VII is not implicated. Plaintiff's termination was not due to sex discrimination.

17. Through the second type of Title VII claim, a disparate impact claim, a

plaintiff can challenge employment practices "that are facially neutral in their treatment of different groups but that in fact fall more harshly on one group than another and cannot be justified by business necessity." Teamsters, 431 U.S. at 336, n.15; Segar, 738 F.2d at 1266.

18. In a disparate impact claim, the plaintiff need not prove illicit motive. Griggs v. Duke Power Co., 401 U.S. 424, 432 (1971). Instead, a plaintiff may challenge the disparate impact of specific employment practices, Segar, 738 F.2d at 1266, or a plaintiff may challenge the employment system as a whole. Teamsters, 431 U.S. at 366 n.15; see Vuyanich v. Republic Nat'l Bank of Dallas, 521 F. Supp. 656, 663 (N.D. Texas 1981). A disparate impact analysis "aims at discovery and elimination of facially

neutral employment practices that adversely affect minorities and cannot be justified as necessary to an employer's business." Segar, 738 F.2d at 1267.

19. The plaintiff bears the burden of persuasion as to the existence of a gender-related disparity caused by an employment practice but, once a plaintiff has made this showing, the employer bears the burden of persuasion as to the business necessity of the practice. Id.; Vuyanich, 521 F.Supp. at 660.

20. Under disparate impact a plaintiff, to establish a prima facie case, must show that an employment policy or practice has a disproportionate impact on a particular class of which plaintiff is a member. Dothard v. Rawlinson, 433 U.S. 321, 329 (1977). After the plaintiff establishes her prima facie case, the burden shifts to the employer to prove that the employment policy or practice in

question is job related. Id.; Griggs v. Duke Power Co., 401 U.S. 424, 432 (1971). If the employer establishes that it is job related, the plaintiff must prove that an equally efficient method was available to the employer, in order to prevail. Albermarble Paper Co. v. Moody, 422 U.S. 405, 425 (1975); McDonnell Douglas Corp. v. Green, 411 U.S. 792, 801 (1973).

21. In Carroll v. Talman Federal Savings and Loan Association of Chicago, 604 F.2d 1028 (7th Cir. 1979), the Seventh Circuit held that the defendant's dress policy which required female employees to wear a uniform but only required men to wear "ordinary business attire" discriminated against women in violation of Title VII. Notwithstanding the court emphasized that:

> We share the reluctance of the courts in Fountain and Fagan to pass on

> whether a particular personal appearance regulation promulgated by an employer is "reasonable." So long as they find some justification in commonly accepted social norms and are reasonably related to the employer's business needs, such regulations are not necessarily violations of Title VII even though the standards prescribed differ somewhat for men and women. However, the situation is different, where, as here, two sets of employees performing the same functions are subjected on the basis of sex to two entirely separate dress codes -- one including a variety of normal business attire and the other requiring a clearly identifiable uniform. This different treatment in the conditions of employment for female employees cannot be business necessity, since, as already described, the employer had a variety of non-discriminatory alternative means of assuring good grooming.
>
> Id. at 1032 (footnote omitted).

22. Here the defendant clearly requires both men and women to conform to a status of wearing customary business attire. As the Eighth Circuit held in Knott v. Missouri Pacific Railroad, 527 F.2d 1249, 1252 (8th Cir. 1975), minor differences in personal appearance

regulations that reflect customary modes of grooming do not constitute sex discrimination ([w]here, as here, such policies are reasonable and are imposed in an even-handed manner on all employees, slight differences in the appearance requirements for males and females have only negligible effect on employment opportunities." Accordingly, it is of no consequence that the plaintiff violated the defendant's grooming policy by wearing long hair and excessive makeup. It is true these are traits traditionally associated with women. But these are only minor variations contained in an overall, even-handed grooming policy.

23. In Bestulli v. First National Stores, 20 F.E.P. 1527 (D. Mass. 1979), a male employee was ordered on two difference occasions by his employer to shave off his beard. The first time he complied. On the second occasion, he

refused and was discharged. The district court granted the defendant's motion for summary judgment. In doing so it noted that eight circuits had ruled that grooming codes do not violate Title VII. Likewise here the defendant's restrictions on the way a woman wears her hair or the amount of makeup she uses are part of comprehensive personal grooming code applicable to all employees.

24. Section 706(e) of the Civil Rights Act of 1964, 42 U.S.C. Sec. 2000e-5(e), mandates that an aggrieved party file a charge with the EEOC within 180 days of the discriminatory act of which he complains. The filing requirements of 42 U.S.C. Sec. 2000e-5 were once considered jurisdictional prerequisites. Alexander v. Gardner-Denver Co., 415 U.S. 36, 47 (1974); Patterson v. General Motors Corporation, 631 F.2d 476, 483 (7th Cir.

1980); Choate v. Caterpillar Tractor Co., 402 F. 2d 357, 359 (7th Cir. 1968). The Supreme Court rejected this interpretation in Zipes v. Trans World Airlines, Inc., 455 U.S. 385 (1982), holding that "filing a timely charge of discrimination with the EEOC is not a jurisdictional prerequisite to suit in federal court." 455 U.S. at 393. Though Zipes was primarily concerned with temporal filing requirements, the Court made it clear that "the provision for filing charges with the EEOC should not be construed to erect a jurisdictional prerequisite to suit in the district court." Id. at 397. In Zipes, the Supreme Court held that the filing of a timely charge with the EEOC was a requirement similar to a statute of limitations, that could be subject to waiver, estoppel, and equitable tolling depending upon the facts of each individual case.

25. Plaintiff alleges she failed to receive the teaching job at the Lake County Jail because of sex discrimination. She points to the fact that a male, Mark Helmrich, was chosen to fill the position. The evidence supports plaintiff's contention that objectively her qualifications were superior. The evidence also establishes this position was filled by October 9, 1982. Plaintiff did not file a charge of discrimination with the EEOC until May 18, 1983.

26. The event which triggered the running of the 180 day period of limitation was the date that plaintiff was informed that Helmrich was given the jail job. This took place at the latest by the end of October, 1982. Because plaintiff filed a charge with the EEOC on May 18, 1983, her Title VII claim with respect to the jail position is time barred.

27. The 180-day period begins to run "when an employee either knows or should know that an unlawful employment practice has been committed." Ortiz v. Chicago Transit Authority, 639 F.Supp. 310, 312 (N.D. Ill. 1986). The jail job was filled on October 9, 1982. The plaintiff knew this position was filled by a male. The 180-day period commenced to run on October 9, 1982. Since plaintiff did not file with the EEOC until May 18, 1983, her jail-job claim is time-barred.

28. "[T]he availability of the equitable tolling doctrine is dependent upon a plaintiff's reasonable efforts to obtain information which may support a discrimination claim." King v. Telesphere Intern., Inc., 632 F.Sup. 981, 983 (N.D. Ill. 1986). Plaintiff fails to allege she ever inquired into the reasons why she did not receive the jail teaching job after she was informed that the judge appointed

Helmrich. Her claim with respect to the jail teaching position is time barred.

29. Indiana is a deferral state. In a deferral state, an employee has 300 days to file with the EEOC. In Order to have the benefit of this extended period of time, the employee must file with the appropriate state agency. The record reveals that the plaintiff did not make proper filing with an appropriate Indiana state agency. Therefore, she is not entitled to the benefits of the 300-day filing period. See Martinez v. United Auto, Aerospace, 8 Ar. 772, F.2d 348 (7th Cir. 1985); Howze v. Jones & Laughlin Steel Corp., 750 F.2d 1208, 1210 (3d Cir. 1984).

CONCLUSION

Plaintiff's termination was not due to unlawful sex discrimination. Her jail-job claim is time-barred. Based on the above

findings, it is hereby ORDERED that judgment is entered for the defendants. The Clerk of the Court is directed to act accordingly.

ENTER: October 20, 1987

_____

JUDGE, UNITED STATES DISTRICT COURT